

REMARKS

Favorable reconsideration is respectfully requested in light of the following comments. No amendments are presented herein, and thus claims 21-35 remain pending.

Claims 21, 22 and 24-31 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Engelson et al., U.S. Patent No. 5,972,019, in view of Ginsburg, U.S. Patent No. 5,011,488. Claims 21-31 stand rejected under 35 U.S.C. §103(a) as unpatentable over Schmaltz et al., U.S. Patent No. 5,449,372, in view of Ginsburg, U.S. Patent No. 5,011,488, and further in view of Crittenden et al., U.S. Patent No. 4,719,924. Claims 32-35 under 35 U.S.C. §103(a) as unpatentable over Engelson et al., U.S. Patent No. 5,972,019, in view of Ginsburg, U.S. Patent No. 5,011,488, and further in view of Lefebvre, U.S. Patent No. 5,421,832. Applicants respectfully traverse each and every one of these rejections.

There is a common thread running through each of these rejections, i.e., each rejection is flawed and should be withdrawn. In particular, in each of these rejections, the Examiner has failed to establish a proper *prima facie* obviousness rejection. One of the requirements of a *prima facie* obviousness rejection is that there must be motivation to combine the references. This requirement has not been met. Another requirement of a *prima facie* obviousness rejection is that the cited combination must disclose each and every claimed element. This requirement has not been met. Applicants do not concede that the remaining requirement, pertaining to a reasonable expectation of success, has been met.

With respect to motivation to combine, it is noted once again that the Examiner relies upon Ginsburg to suggest that it would be obvious to use both a distal cage and a proximal cage in the devices allegedly disclosed by the other references. In particular, the Examiner has asserted that "Ginsburg discloses the use of a proximal and distal element (balloon) in order to remove the thrombotic material without surgical intervention" and therefore it would be obvious to include a proximal cage and a distal cage in the devices allegedly disclosed by the other references.

However, and as discussed in the previous Communication, Ginsburg does not describe or suggest a proximal cage and a distal cage and thus cannot reasonably be considered as remedying the admitted shortcomings of each of the other references.

Indeed, Ginsburg merely appears to describe using an inflatable cone-shaped balloon to pull debris towards a suction tube. A balloon is not a distal cage. A suction tube is not a proximal cage. A balloon and a suction tube do not describe or suggest a proximal cage and a distal cage. As previously asserted, one of skill in the art would not interpret Ginsburg as describing or suggesting the use of a proximal cage and a distal cage. Rather, one of skill in the art would interpret Ginsburg as teaching the use of an inflatable balloon that can be moved proximally to sweep vascular debris into a suction tube. Nothing more.

Quite simply, there is absolutely no suggestion within Ginsburg to include a proximal cage and a distal cage. As previously asserted, the only appropriate and relevant suggestion or teaching of including both a proximal cage and a distal cage is found within the instant specification. It is axiomatic that reconstructive hindsight is improper. While the Examiner has defended the rejections as being proper rejections that do not rely upon any "knowledge gleaned only from the applicant's disclosure", this is not correct. The Examiner has failed to provide any suggestion or reason as to why one of skill in the art, having read and understood Ginsburg's disclosure, would interpret said disclosure as suggesting a proximal cage and a distal cage. The Examiner has failed to provide a reasonable basis for motivation to combine. Thus, each rejection relying on an obviously reconstructive interpretation of Ginsburg is improper and should be withdrawn.

Moreover, and as noted above, even if Ginsburg is combined with the other references, the asserted combination would not meet each and every claimed feature. In particular, none of the references cited by the Examiner disclose a proximal cage and a distal cage. As discussed above, Ginsburg also fails to disclose a proximal cage and a distal cage. Even if Ginsburg is combined with the other references, and Applicants do not believe there is any reasonable motivation to do so, the combination would fail to disclose both a proximal cage and a distal cage. As a result, the combination fails to disclose each and every claimed element and thus another requirement of a *prima facie* obviousness rejection is missing from each of the rejections.

For at least these reasons, each and every one of the pending rejections are flawed and should be withdrawn. Favorable reconsideration is respectfully requested.

Reexamination and reconsideration are respectfully requested. It is submitted that all pending claims are currently in condition for allowance. Issuance of a Notice of Allowance in due course is anticipated. If a telephone conference might be of assistance, please contact the undersigned attorney at 612.677.9050.

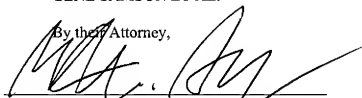
Respectfully submitted,

GENE SAMSON ET AL.

By their Attorney,

Date:

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